

**BEFORE the HEARING EXAMINER for the  
CITY of SAMMAMISH**

<b>DECISION</b>
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FILE NUMBER: SSDP2017-00343

APPLICANT: Walter T. Pereyra  
148 East Lake Sammamish Parkway SE  
Sammamish, WA 98074

TYPE OF CASE: Shoreline Substantial Development Permit to construct a 390 square foot, fully grated, private dock with associated free-standing boat lift

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF DECISION: February 26, 2018

**INTRODUCTION <sup>1</sup>**

Walter T. Pereyra ("Pereyra") seeks approval of a Shoreline Management Act ("SMA") Substantial Development Permit ("SSDP") to construct a 390 square foot, fully grated, private dock with associated free-standing boat lift. Removal of an upland concrete wall and native revegetation of the area between the wall and the ordinary high water mark ("OHWM") is included.

Pereyra filed a Base Land Use Application on May 3, 2017. (Exhibit 6 <sup>2</sup>) The Sammamish Department of Community Development ("Department") deemed the application to be complete when submitted. (Testimony) The Department issued a completion letter on May 18, 2017, and a Notice of Application on June 1, 2017. (Exhibits 8; 9)

The subject property is located at 125 East Lake Sammamish Parkway SE, between the eastern shoreline of Lake Sammamish and the East Lake Sammamish Trail.

The Sammamish Hearing Examiner ("Examiner") viewed the subject property on February 9, 2018.

The Examiner held an open record hearing on February 9, 2018. The Department gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 21)

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<sup>1</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.  
<sup>2</sup> Exhibit citations are provided for the reader's benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner's Decision is based upon all documents in the record.

Subsection 20.05.100(1) SMC requires that decisions on SSDP applications be issued within 120 net review days after the application is found to be complete. The open record hearing was held after the 120<sup>th</sup> net review day. (Testimony) The SMC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or written notice from the Department explaining why the deadline was not met [SMC 20.05.100(4)]. Pereyra's agent chose to waive any irregularities in the time line. (Testimony)

The following exhibits were entered into the hearing record during the hearing:

Exhibits 1 - 21: As enumerated in Exhibit 1, the Departmental Staff Report

Exhibit 12 was inadvertently missing a page and a stray page from an unrelated application had inadvertently found its way into Exhibit 12 as of the hearing date. The Examiner directed that the stray page be discarded. The Examiner held the record open through close of business on February 13 for submittal of the missing page. The Deputy City Clerk obtained and provided a copy of the missing page after the close of the hearing on February 9, 2018. Therefore, the hearing closed on February 9, 2018, with receipt of the missing page.

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

### **FINDINGS OF FACT**

1. The Pereyra property is an approximately 7,100 square foot ("SF"), more or less rectangular parcel located on the eastern shore of Lake Sammamish. It has approximately 45 feet of frontage on the lake shoreline. Until recently, the property contained a single-family residence and a detached garage. The City issued a demolition permit for removal of the residence and a building permit for construction of a new residence. A low, concrete wall crosses the width of the lot between 10 and 15 feet (horizontal measurement) upland of the OHWM. (Exhibits 1; 2; and testimony)
2. Pereyra proposes to construct a fully grated, 4' x 80' dock with a small 6' x 11' ell at its outboard end. A free-standing boat lift will be placed on the lake bed on the north side of the end of the dock. The boat lift will be largely underwater and operated by a hydraulic system powered by a 12-volt battery. There will be no cover on the boat lift. Water depth at the outboard end of the dock will be about 10 feet. (Exhibits 1; 2; and testimony)

Associated with the new dock is removal of the concrete wall which is well above the OHWM. Extensive native vegetation will be planted in the area between the OHWM and the location of the former wall. (Exhibit 3; and testimony)

3. Lake Sammamish and shorelands within 200 feet of the lake's OHWM are within the jurisdictional area of the SMA. Lake Sammamish is a designated Shoreline of Statewide Significance under the SMA. The City's Shoreline Master Program ("SMP") designates the subject property Shoreline Residential. A private dock is a preferred water-oriented and water-dependent use under the SMP. An SSDP is required because the dock's estimated cost exceeds the established threshold requiring a permit. (Exhibit 1)
4. The SMP contains extensive design and location standards for docks, referred to by the Department as the "Dock Design Requirements." [SMC 25.07.050] The proposed Pereyra dock complies with all applicable provisions of the Dock Design Requirements. (Exhibits 1; 2)
5. The SMP requires establishment of a Vegetation Enhancement Area ("VEA") along a property's shoreline whenever a project will disturb uplands within the established SMA setback area. [SMC 25.06.020(10)] Although the proposed dock will be located almost entirely waterward of the OHWM, as previously noted, Pereyra is proposing to install a significant amount of native shoreline vegetation as mitigation for removal of the concrete wall. (Exhibits 1, p. 5, § I.11; 3)
6. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application. The record contains two comments from area Indian tribes. Both tribes offered suggestions on the vegetation enhancement plan. Pereyra revised his plans in response to those comments. (Exhibits 1, p. 6, § I.14; 5.1; 5.2)
7. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the Pereyra dock project on December 18, 2017. (Exhibit 4) The DNS was not appealed. (Testimony)
8. The Department staff report (Exhibit 1) contains a thorough analysis of the project's compliance with SMA and SMP requirements. The Department recommends approval of the SSDP subject to ten conditions.
9. Pereyra's agent did not object to the staff report nor voice any objection to the recommended conditions. (Testimony)
10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

### **LEGAL FRAMEWORK<sup>3</sup>**

The Examiner is legally required to decide this case within the framework created by the following principles:

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<sup>3</sup> Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

#### Authority

A Shoreline SSDP is a Type 4 procedures. A Type 4 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on Type IV applications which is subject to the right of reconsideration and appeal to the State Shorelines Hearings Board. [SMC 20.05.020, 20.10.240, 20.10.260, and 25.35.080(1)]

The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

#### Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision . . . , he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision . . . is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Subsection 25.08.020(2) SMC requires that a proposed Substantial Development be "consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and [the City of Sammamish Shoreline Master Program]."

#### Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1)] Therefore, this application is vested to the development regulations as they existed on May 3, 2017.

#### Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [SMC 25.08.050(4) and City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

#### Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

### **CONCLUSIONS OF LAW**

1. This is an uncontested case in which there is no challenge to the Department's analysis nor to the Recommended Conditions as contained in Exhibit 1. Lengthy, detailed Conclusions of Law are, therefore, unnecessary. Rather, the Examiner adopts the Department's analysis contained in Exhibit 1 by reference as if set forth in full.

The Department's written analysis did not expressly address the associated boat lift. The Department testified that the proposed boat lift is permitted in conjunction with a dock and that the proposal complies with all applicable standards for a private boat lift. In the absence of controversy, the Examiner finds that testimony to be sufficient.

2. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
  - A. Section 173-27-190 WAC contains certain content and format requirements for any SSDP R which is issued:

(1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).

(2) Permits for substantial development, conditional use, or variance may be in any form prescribed and used by local government including a combined permit application form. Such forms will be supplied by local government.

(3) A permit data sheet shall be submitted to the department with each shoreline permit. The permit data sheet form shall be as provided in Appendix A of this regulation.

Subsection (2) allows this Decision to serve as the SSDP. Subsection (1) requires that an additional condition be added. The data sheet required by Subsection (3) will be prepared by the Department when it transmits the SSDP and supporting exhibits to the state as required by Chapter 90.58 RCW.


- C. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Condition 3 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

3. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

### DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** the requested Shoreline Substantial Development Permit to construct a 390 square foot, fully grated, private dock with associated free-standing boat lift and to remove a concrete wall located between about 10 to 15 feet upland of the OHWM **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued February 26, 2018.

  
John E. Galt  
Hearing Examiner

### HEARING PARTICIPANTS <sup>4</sup>

Gregory Wayne Ashley

Tracy Cui

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<sup>4</sup> The official Parties of Record register is maintained by the City's Hearing Clerk.

### **NOTICE of RIGHT of RECONSIDERATION**

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228<sup>th</sup> Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

### **NOTICE of RIGHT of APPEAL**

This Decision is final and conclusive subject to the right of review before the State Shorelines Hearings Board in accordance with the procedures of Chapter 90.58 RCW, the Shoreline Management Act of 1971. See SMC 20.35.080, Chapter 90.58 RCW, and Washington Administrative Code regulations adopted pursuant thereto for further guidance regarding Hearings Board appeal procedures.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

### **CONDITIONS OF APPROVAL PEREYRA PRIVATE DOCK REPLACEMENT SSDP2017-00343**

This Shoreline Substantial Development Permit is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, and the following **SPECIAL CONDITIONS**:

1. **Exhibit 2** is the approved project plan set and **Exhibit 3** is the approved mitigation plan for this SSDP.
2. The Permittee shall comply with all city, county, state, and federal rules and regulations in effect on May 3, 2017, the vesting date of the subject application, including any necessary permits from applicable state or federal agencies.

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3. A building permit issued in accordance with SMC Title 16 must be approved prior to commencing project construction. Final construction plans showing the proposed dock shall be in substantial conformance with **Exhibit 2**.
4. No significant tree removal is allowed.
5. As part of the building permit application, the Permittee shall provide a site plan which contains the location of the OHWM, as surveyed by a professional land surveyor licensed in the State of Washington.
6. Prior to building permit issuance, the Permittee shall post a performance bond to ensure completion of mitigation work. After mitigation installation, the project biologist must document installed mitigation in an as-built report and plan that is supplied for City Review. After the City accepts the as-built condition, the performance bond will be released and the mitigation project will shift into the required 5-year mitigation monitoring period after a maintenance and defect bond is posted to replace the performance bond.
7. Final construction plans, including staging plan, shall be prepared and submitted to the City for review with application for the building permit. Site disturbance shall be the minimum necessary to accommodate the scope of work.
8. A condition shall be placed on the grading permit as follows: *Fertilizer used in planting areas shall be minimized and any fertilizer used shall not contain phosphorous and shall be utilized consistent with the product's timing and quantity specifications. No herbicide shall be used for weed control unless specifically authorized by the City of Sammamish.*
9. Prior to building permit issuance, a note shall be placed on the construction plans/permit regarding compliance with SMC 25.06.010 and requiring notification the Washington State Department of Archaeology and Historic Preservation if artifacts are discovered.
10. Pursuant to WAC 173-27-090, construction shall be commenced on the proposed dock within two (2) years of the date that the SSDP is issued (or becomes final following any reconsideration or appeal periods, if applicable). Authorization to conduct development activities under the SSDP shall terminate five (5) years after the effective date of this permit. The City may authorize a single extension for a period not to exceed one (1) year based on a showing of good cause to the Community Development Department Director of reasonable factors, if a request for extension has been filed before the expiration date, and notice of the proposed extension is given to parties of record and the City.

EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a) AND (b), CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN AND IS NOT AUTHORIZED UNTIL TWENTY-ONE DAYS FROM THE DATE THIS PERMIT IS FILED WITH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY

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AND ATTORNEY GENERAL AS REQUIRED BY RCW 90.58.140(6) AND WAC 173-27-130, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE DAYS FROM THE DATE OF SUCH FILING HAVE BEEN TERMINATED.